

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

FOR MR. JUSTICE VAN
19

TRANSCRIPT OF RECORD

Court of Appeals of the District of Columbia

APRIL TERM, 1932

No. 5788

265

AMERICAN ICE COMPANY, A CORPORATION,
APPELLANT,

vs.

BESSIE M. MOOREHEAD

AND

No. 5789

AMERICAN ICE COMPANY, A CORPORATION,
APPELLANT,

vs.

ROBERT S. MOOREHEAD.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

FILED SEPTEMBER 20, 1932.

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~~Stacy~~
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Court of Appeals of the District of Columbia

APRIL TERM, 1932

Nos. 5788 and 5789

AMERICAN ICE COMPANY, A CORPORATION,
APPELLANT,

vs.

BESSIE M. MOOREHEAD AND ROBERT S.
MOOREHEAD, APPELLEES.

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

No. 5788.

AMERICAN ICE COMPANY, a Corporation, Appellant,

vs.

BESSIE M. MOOREHEAD,

and No. 5789.

AMERICAN ICE COMPANY, a Corporation, Appellant,

vs.

ROBERT S. MOOREHEAD.

a Supreme Court of the District of Columbia.

At Law. #77663.

BESSIE M. MOOREHEAD, Plaintiff,

vs.

AMERICAN ICE COMPANY, a Corporation, Defendant,

and At Law. #77664.

ROBERT S. MOOREHEAD, Plaintiff,

vs.

AMERICAN ICE COMPANY, a Corporation, Defendant.

Consolidated.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered, That in the Supreme Court of the District of Columbia, at the City of Washington, in said

District, at the times hereinafter mentioned, the following papers were filed and proceedings had in the above-entitled causes, to wit:

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Declaration.

Filed February 6, 1930.

In the Supreme Court of the District of Columbia.

At Law.

#77663.

BESSIE M. MOOREHEAD, Plaintiff,

VS.

AMERICAN ICE COMPANY, a Corporation, Defendant.

1. The plaintiff, Bessie M. Moorehead, sues the defendant, American Ice Company, a corporation, for that heretofore, to wit: on the 31st day of January, A. D. 1929, the said defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery and transportation of said ice and coal; that on the day aforesaid the said plaintiff was walking west on Pennsylvania Avenue, N. W., and on arriving at the intersection of 13th Street and said Pennsylvania Avenue, N. W., in the District of Columbia, said plaintiff observing vehicular traffic moving west on Pennsylvania Avenue proceeded to cross said 13th Street at its intersection with said Pennsylvania Avenue in a continuation of the sidewalk lines of said Pennsylvania Avenue; that it then and there became and was the duty of said defendant corporation to so operate, drive and control its motor vehicles, then being operated upon the highways of the District of Columbia, and on, to wit: Pennsylvania Avenue, through its agents and servants, in such a manner and fashion as to comply with the traffic and motor vehicle laws and regulations for the District of Columbia in force and effect at that time, and so as not to collide with or injure the said plaintiff; that said defendant corporation through its agents, servants and em-

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ployees at the time aforesaid, and notwithstanding its duty and obligation in the premises, did on said day aforesaid, drive, operate and propel one of its motor vehicles, to wit: a truck, in a westerly direction on Pennsylvania Avenue and cause the same to turn into and be driven around the corner of the intersection formed by said Pennsylvania Avenue and 13th Street, suddenly, carelessly and without warning and without giving right of way to said plaintiff, and to proceed and cause said vehicle to be driven in a northerly direction on 13th Street in a reckless manner and at a rate of speed greater than was reasonable and proper, having regard to the width of said highway and the use thereof and the traffic thereon, and so as to endanger and injure the plaintiff in violation of the law and traffic regulations of the District of Columbia, reading in part as follows:

Article II, Section 2a. Pedestrians shall have the right of way at all crosswalks except those controlled by traffic officers and the traffic devices, and it shall be unlawful for any person to cross the roadway through moving traffic on any street upon which traffic is controlled by electric signal lights.

Article IV, Section 5a. No individual shall operate a motor vehicle over any public highway in the District (1) recklessly, or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon, or (3) so as to endanger any property or individual, or (4) so as to unnecessarily or unreasonably to damage the public highway.

That as a result of the negligence and carelessness of the defendant through its agents, servants and employes, as aforesaid, said motor vehicle was driven into and collided with the plaintiff, who was thereupon violently
3 thrown to the street and rendered unconscious, and a certain wheel of said vehicle, described as a truck, to wit: the rear wheel thereof, passed over the lower extremities of both of the limbs or legs of said plaintiff, and as a result thereof the ankles of said plaintiff were injured and both feet of said plaintiff were crushed and bruised; that said plaintiff also suffered and sustained various bruises, contusions and lacerations in and about her

heard and body by reason of being so thrown to said street as aforesaid; that said plaintiff also sustained violent shock to her nervous system; that as a result thereof said plaintiff became and was sick and sore for a long period of time, up to and including, to wit: the time of the bringing of this suit, and will continue to be sick and sore, and did suffer and will continue to suffer great mental and bodily anguish and pain by reason of said injuries as aforesaid, and said plaintiff, by reason of said injuries, is permanently injured and impaired; that said plaintiff expended or caused to be expended large sums of money in endeavoring to be cured of said injuries as aforesaid, and will continue to expend large sums of money hereafter; that said plaintiff by reason of the negligence of said defendant and said injuries as aforesaid, has been deprived of performing her usual and ordinary duties as a mother and wife, and has spent large sums of money in having said duties performed for her; that said injuries as aforesaid were received and sustained by said plaintiff without any negligence and carelessness on her part, but as a direct result of the negligence and carelessness of the defendant corporation as aforesaid.

Wherefore the plaintiff brings this suit and claims judgment in the sum of \$25,000.00, besides costs.

2. The plaintiff, Bessie M. Moorehead, sues the defendant, American Ice Company, a corporation, for that heretofore, to wit: on the 31st day of January, A. D. 1929, the said defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery and transportation of said ice and coal; that on the day aforesaid the said plaintiff was a pedestrian, lawfully upon the sidewalks and highways of the District of Columbia, to wit: Pennsylvania Avenue and 13th Street, N. W., in said District of Columbia; that it then and there became and was the duty of said defendant corporation to so operate, drive and control its motor vehicles as not to injure, collide with, or damage the said plaintiff; that notwithstanding its duty in the premises said defendant, through its agents and servants on the day aforesaid at or near the intersection of 13th Street and Pennsylvania Avenue, N. W., in the District of Columbia, did operate or drive one of its motor vehicles, to

wit: a truck, carelessly and negligently in such a manner and fashion as to permit said motor vehicle to collide with, knock down, and injure the said plaintiff; that as a result thereof said plaintiff was thrown violently to the street and suffered various bruises, contusions and injuries to her body, and said plaintiff was permanently injured, and as a result thereof was rendered sick and sore and so remained for a long space of time and did suffer great mental and bodily pain and anguish; that as a result of said negligence as aforesaid, said plaintiff suffered and incurred great expense and damage.

Wherefore the plaintiff brings this suit and claims judgment in the sum of \$25,000.00, besides costs.

STANLEY D. WILLIS,
Attorney for Plaintiff.

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Pleas.

Filed February 26, 1930.

* * * * *

1. Now comes the defendant, American Ice Company, by its attorney and for a plea to the first count of the declaration filed herein admits that on the 31st day of January, 1929, defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery of said ice and coal; for lack of information, neither admits nor denies that on the day aforesaid, plaintiff was walking west on Pennsylvania Avenue, N. W., or observed vehicular traffic moving west on said Pennsylvania Avenue; admits that plaintiff started to cross 13th Street; does not answer the allegations of plaintiff as to defendant's duty because they are allegations of law and not of fact and require no answer; admits that at the said time, defendant's truck was driven by its employee in a westerly direction on said Pennsylvania Avenue and around the corner of the intersection of said Pennsylvania Avenue and 13th Street and in a northerly direction on said 13th Street; admits that the provisions quoted in the first count of plaintiff's declaration are among the traffic regulations for the District of Columbia; admits that

defendant's motor truck collided with plaintiff and that plaintiff fell to the street; for lack of information, neither admits nor denies the allegations as to the nature and extent of plaintiff's damage, injuries, and loss; and denies generally and specifically all other allegations of the first count of plaintiff's declaration. Defendant alleges that in proceeding to cross said 13th Street, plaintiff did not keep within the continuation of the sidewalk lines of said

6 Pennsylvania Avenue but was between the crosswalks on said Pennsylvania Avenue and E Street, N. W., and between the intersection of said Pennsylvania Avenue with said 13th Street and the intersection of said E Street with said 13th Street, and plaintiff then and there failed to yield the right of way to defendant's truck in violation of Section 2 (b) of Article II of the Traffic and Motor Vehicle Regulations for the District of Columbia reading as follows:

“Vehicles shall have the right of way between crosswalks and between street intersections,”

and any injuries sustained by plaintiff were proximately caused by the violation of said regulation.

2. For a plea to the second count of the declaration filed herein, defendant admits that on the 31st day of January, 1929, defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery and transportation of said ice and coal; admits that on the said day, plaintiff was on 13th Street, N. W. in said District of Columbia; for lack of information, neither admits nor denies that plaintiff was at some time on the said day on Pennsylvania Avenue, N. W., in said District of Columbia; does not answer the allegations that plaintiff was lawfully on said streets or as to defendant's duty because they are allegations of law and not of fact and require no answer; admits that on the said day, defendant's truck was driven by its employee at or near the intersection of said 13th Street and said Pennsylvania Avenue, and that said truck collided with plaintiff and that plaintiff fell to the street; for lack of information, neither admits nor denies the allegations as

7 to the nature and extent of plaintiff's damage, injuries, and loss; and denies generally and specifically all other allegations of the second count of plaintiff's declaration.

3. And for a further plea to the said declaration, defendant says that plaintiff's injuries, if any, were caused by plaintiff's own negligence and carelessness in crossing said 13th Street without keeping a proper lookout, and not by any negligence or carelessness on the part of this defendant, or its agents, servants, or employees.

4. And for a further plea to the said declaration, defendant says that plaintiff's injuries, if any, were caused by plaintiff's own negligence and carelessness and not by any negligence or carelessness on the part of this defendant, or its agents, servants, or employees.

JOHN W. FISHER,
Attorney for Defendant.

Supreme Court of the District of Columbia.

Friday, April 8, 1932.

Session resumed pursuant to adjournment, Hon. O. R. Luhring, Justice, presiding.

* * * * *

At Law. No. 77663.

BESSIE M. MOOREHEAD, Plaintiff,

vs.

AMERICAN ICE COMPANY, a Corp., Defendant.

At Law. No. 77664.

ROBERT S. MOOREHEAD, Plaintiff,

vs.

AMERICAN ICE COMPANY, a Corp., Defendant.

8 Come now the parties hereto in each of the above entitled causes by their respective attorneys of record, whereupon, it is agreed between the parties hereto that the above entitled causes may be consolidated

for the purpose of trial before the same jury and thereupon, comes now a jury of good and lawful men and women of this district, to-wit; George J. Holland, Ruth Y. Lancaster, Leo Hayes, Mrs. Delia Davis, Albert S. Donovan, William B. Flack, James E. Rosenthal, Willard Saulsbury, Milton Baer, Reginald A. Pierce, Mrs. Louise White, Mrs. Margaret M. Harper who are duly sworn to well and truly try the issues herein joined and after these causes are heard in part the jury is respited until Monday morning next at ten o'clock.

Memoranda.

April 11, 1932.—Trial resumed. Verdict for Plaintiff for \$5,000.00.

April 13, 1932.—Motion for new trial filed.

Supreme Court of the District of Columbia.

Monday, April 25, 1932.

Session resumed pursuant to adjournment, Hon. O. R. Luhring, Justice, presiding.

* * * * *

(Law. No. 77663.)

Upon consideration of the motion filed herein for a new trial it is ordered that said motion be, and the same is hereby overruled and judgment on verdict ordered.

Wherefore it is considered that plaintiff recover of defendant herein the sum of Five Thousand Dollars (\$5000.00) with interest thereon until paid, together with costs of suit to be taxed by the clerk and have execution thereof.

9 To the foregoing judgment the defendant by its attorney, in open court, notes an appeal to the Court of Appeals of this District; whereupon, an undertaking to act as a cost bond is hereby fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit Fifty Dollars (\$50.00) cash with the clerk in lieu thereof, and a further undertaking to act as a supersedeas bond is hereby fixed in the sum of Six Thousand Five Hundred Dollars (\$6500.00).

Memorandum.

(Law. No. 77663)

May 13, 1932.—Undertaking (supersedeas) approved and filed.

Supreme Court of the District of Columbia.

Friday, May 13, 1932.

Session resumed pursuant to adjournment, Hon. O. R. Luhring, Justice, presiding.

* * * * *

At Law. No. 77663.

BESSIE M. MOOREHEAD, Plaintiff,

vs.

AMERICAN ICE COMPANY, Defendant.

At Law. No. 77664.

ROBERT S. MOOREHEAD, Plaintiff,

vs.

AMERICAN ICE COMPANY, Defendant.

Upon application of counsel for defendant, and good cause having been shown, and the counsel for the plaintiffs having consented to the granting of this order as evidenced by his signature hereto, it is, by the court this 13th day of May, 1932,

10 Ordered that the time for filing the Bill of Exceptions herein, together with the Assignment of Errors, and Designation of Record, be, and the same hereby is extended to and including the 26th day of May, 1932 by the court.

It is further ordered that said causes be and hereby are consolidated for the purposes of appeal.

Declaration.

Filed February 6, 1930.

In the Supreme Court of the District of Columbia.

At Law.

#77664.

ROBERT S. MOOREHEAD, Plaintiff,

vs.

AMERICAN ICE COMPANY, a Corporation, Defendant.

1. The plaintiff, Robert S. Moorehead, sues the defendant, American Ice Company, a corporation, for that heretofore, to wit: on the 31st day of January, 1929, the said defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery and transportation of said ice and coal; that on the day aforesaid the wife of the plaintiff herein, Bessie M. Moorehead, was walking west on Pennsylvania Avenue, N. W., and on arriving at the intersection of 13th Street and said Pennsylvania Avenue, N. W., in the District of Columbia, the said wife of said plaintiff observing vehicular traffic moving west on Pennsylvania Avenue proceeded to cross said 13th Street at its intersection with said Pennsylvania Avenue in a continuation of the sidewalk lines of said Pennsylvania Avenue; that it then and there became and was the duty of said defendant corporation to so operate, drive and control its motor vehicles then being operated upon the highways of the District of Columbia, and on to wit: Pennsylvania Avenue, through its agents and servants, in such a manner and fashion as to comply with the traffic and motor vehicle laws and regulations for the District of Columbia in force and effect at that time, and so as not to collide with or injure the wife of said plaintiff; that said defendant corporation through its agents, servants and employees at the time aforesaid, and notwithstanding its duty and obligation in the premises, did on said day aforesaid drive, operate and

propel one of its motor vehicles, to wit: a truck, in a westerly direction on Pennsylvania Avenue and cause the same to turn into and be driven around the corner of the intersection formed by said Pennsylvania Avenue and 13th Street, suddenly, carelessly and without warning and without giving a right of way to the wife of said plaintiff, and to proceed and cause said vehicle to be driven in a northerly direction on 13th Street in a reckless manner and at a rate of speed greater than was reasonable and proper, having regard to the width of said highway and the use thereof, and the traffic thereon, and so as to endanger and injure the wife of said plaintiff in violation of the laws and traffic regulations of the District of Columbia, reading in part as follows:

Article II, Section 2a. Pedestrians shall have the right of way at all crosswalks except those controlled by traffic officers and the traffic devices, and it shall be unlawful for any person to cross the roadway through moving traffic on any street upon which traffic is controlled by electric signal lights.

Article IV, Section 5a. No individual shall operate a motor vehicle over any public highway in the District (1) reckelssly, or (2) at a rate of speed greater than is reasonable and proper, having regard to the width of the public highway, the use thereof, and the traffic thereon, or (3) so as to endanger any property or individual, or (4) so as to unnecessarily or unreasonably to damage the public highway.

That as a result of the negligence and carelessness of the defendant through its agents, servants and employees as
13 aforesaid, said motor vehicle was driven into and
collided with the wife of said plaintiff, who was
thereupon violently thrown to the street and rendered unconscious, and a certain wheel of said vehicle, described as a truck, to wit: the rear wheel thereof, passed over the lower extremities of both of the limbs or legs of the wife of said plaintiff, and as a result thereof the ankles of the wife of said plaintiff were injured and both feet of the wife of said plaintiff were crushed and bruised; that the wife of said plaintiff also suffered and sustained various bruises, contusions and lacerations in and about her head

and body by reason of being so thrown to said street as aforesaid; that the wife of said plaintiff also sustained violent shock to her nervous system; that as a result thereof the wife of said plaintiff became and was sick and sore for a long period of time, up to and including, to wit: the time of the bringing of this suit, and will continue to be sick and sore, and did suffer and will continue to suffer great mental and bodily anguish and pain by reason of said injuries as aforesaid, and the wife of said plaintiff by reason of said injuries, is permanently injured and impaired; that by reason thereof said plaintiff has expended or caused to be expended large sums of money in endeavoring to have his wife cured and relieved of said injuries as aforesaid, and will continue to expend large sums of money hereafter for the same purpose; that by reason of the negligence of said defendant and the injuries so sustained by the wife of said plaintiff as aforesaid, the plaintiff has been deprived of the service of his said wife in his household, and has spent large sums of money in having said duties otherwise performed.

That the wife of said plaintiff, by reason of the negligence of said plaintiff, has been prevented from and
14 hindered in the performance of her usual duties as wife and mother in the household of said plaintiff, and further by reason of said negligence as aforesaid the plaintiff has lost and will continue to lose and be denied the association, service, comfort, society and assistance of his said wife.

Wherefore the plaintiff brings this suit and claims judgment in the sum of \$10,000.00, besides costs.

2. The plaintiff, Robert S. Moorehead, sues the defendant American Ice Company, a corporation, for that heretofore, to wit: on the 31st day of January, A. D. 1929, the said defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery and transportation of said ice and coal; that on the day aforesaid the wife of said plaintiff was a pedestrian lawfully upon the sidewalks and highways of the District of Columbia, to wit: Pennsylvania Avenue and 13th Street, N. W., in said District of Columbia; that it then and there became and was the duty of said defendant corporation to so operate, drive and control its

motor vehicles as not to injure collide with, or damage the wife of said plaintiff; that notwithstanding its duty in the premises said defendant, through its agents and servants, on the day aforesaid, at or near the intersection of 13th Street and Pennsylvania Avenue, N. W., in the District of Columbia, did operate or drive one of its motor vehicles, to wit: a truck, carelessly and negligently in such a manner and fashion as to permit said motor vehicle to collide with, knock down, and injure the wife of said plaintiff; that as a

15 result thereof the wife of said plaintiff was thrown violently to the street and suffered various bruises, contusions and injuries to her body, and the wife of said plaintiff was permanently injured, and as a result thereof was rendered sick and sore and so remained for a long space of time, and did suffer great mental and bodily pain and anguish; that as a result of the negligence of said defendant, as aforesaid, the wife of said plaintiff was prevented and hindered in the performance of her usual duties as housewife and mother, and has been hindered and prevented from caring for her family, and it was necessary for the plaintiff to employ other persons to do and perform the services heretofore rendered in the household of said plaintiff by his said wife; that further as a result of said negligence as aforesaid, said plaintiff has been forced to expend large sums of money in medicines, doctors' bills, hospital bills and other expenses in an effort to have his wife cured of said injuries as aforesaid; that further by reason of said negligence as aforesaid the said plaintiff has lost and will continue to lose and be denied the association, service, comfort, society and assistance of his said wife as heretofore enjoyed by him prior to the happening of the grievances hereinbefore referred to.

Wherefore the plaintiff brings this suit and claims judgment in the sum of \$10,000.00, besides costs.

STANLEY D. WILLIS,

Attorney for Plaintiff.

Filed February 26, 1930.

* * * * *

1. Now comes the defendant, American Ice Company, by its attorney and for a plea to the first count of the declaration filed herein admits that on the 31st day of January, 1929, defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery of said ice and coal; for lack of information, neither admits nor denies that on the day aforesaid, the wife of the plaintiff was walking west on Pennsylvania Avenue, N. W., or observed vehicular traffic moving west on said Pennsylvania Avenue; admits that the wife of the plaintiff started to cross 13th Street; does not answer the allegations of plaintiff as to defendant's duty because they are allegations of law and not of fact and require no answer; admits that at the said time, defendant's truck was driven by its employee in a westerly direction on said Pennsylvania Avenue and around the corner of the intersection of said Pennsylvania Avenue and 13th Street and in a northerly direction on said 13th Street; admits that the provisions quoted in the first count of plaintiff's declaration are among the traffic regulations for the District of Columbia; admits that defendant's motor truck collided with the wife of the plaintiff and that she fell to the street; for lack of information, neither admits nor denies the allegations as to the nature and extent of the injuries to plaintiff's wife and the damage, expense and loss to plaintiff; and denies generally and specifically all other allegations of the first count of plaintiff's declaration. Defend-

17 ant alleges that in proceeding to cross said 13th Street, the wife of the plaintiff did not keep within the continuation of the sidewalk lines of said Pennsylvania Avenue but was between the crosswalks on said Pennsyl-

vania Avenue and E Street, N. W., and between the intersection of said Pennsylvania Avenue with said 13th Street and the intersection of said E Street with said 13th Street, and the wife of the plaintiff then and there failed to yield the right of way to defendant's truck in violation of Section 2(b) of Article II of the Traffic and Motor Vehicle Regulations for the District of Columbia reading as follows:

“Vehicles shall have the right of way between crosswalks and between street intersections,”

and any injuries sustained by her, and any damage, expense or loss sustained by plaintiff were proximately caused by the violation of said regulation.

2. For a plea to the second count of the declaration filed herein, defendant admits that on the 31st day of January, 1929, defendant was engaged in the business of selling and distributing ice and coal in the District of Columbia, and for that purpose used and employed certain trucks and motor vehicles for the delivery and transportation of said ice and coal; admits that on the said day, the wife of the plaintiff was on 13th Street, N. W. in said District of Columbia; for lack of information, neither admits nor denies that the wife of the plaintiff was at some time on the said day on Pennsylvania Avenue, N. W. in said District of Columbia; does not answer the allegations that the wife of the plaintiff was lawfully on said streets or as to defendant's duty because they are allegations of law and not of fact and require no answer; admits that on the said day, defendant's

18 truck was driven by its employee at or near the intersection of said 13th Street and said Pennsylvania Avenue, and that said truck collided with the wife of the plaintiff and that she fell to the street; for lack of information, neither admits nor denies the allegations as to the nature and extent of the injuries to plaintiff's wife and the damage, expense and loss to the plaintiff; and denies

generally and specifically all other allegations of the second count of plaintiff's declaration.

3. And for a further plea to the said declaration, defendant says that the injuries, if any, to plaintiff's wife and any damage, expense or loss to plaintiff, were caused by the negligence and carelessness of plaintiff's wife in crossing said 13th Street without keeping a proper lookout, and not by any negligence or carelessness on the part of this defendant, or its agents, servants, or employees.

4. And for a further plea to the said declaration, defendant says that the injuries, if any, to plaintiff's wife and any damage, expense, or loss to plaintiff were caused by the negligence and carelessness of plaintiff's wife and not by any negligence or carelessness on the part of this defendant, or its agents, servants, or employees.

5. And for a further plea to the said declaration, defendant says that the injuries, if any, to plaintiff's wife, and any damage, expense or loss to plaintiff, were caused by plaintiff's own negligence and carelessness in failing to keep a proper lookout while crossing said 13th Street with his wife, and in failing to warn his wife or take due care for her safety at the said time and place, and not by any negligence or carelessness on the part of this defendant, or its agents, servants, or employees.

19 6. And for a further plea to the said declaration, defendant says that the injuries, if any, to plaintiff's wife, and any damage, expense or loss to plaintiff were caused by plaintiff's own negligence and carelessness at the said time and place, and not by any negligence or carelessness on the part of this defendant, or its agents, servants, or employees.

JOHN W. FISHER,
Attorney for Defendant.

Memoranda.

April 11, 1932.—Trial resumed; same jury. Verdict for Plaintiff for \$500.00.

April 13, 1932.—Motion for new trial filed.

Supreme Court of the District of Columbia.

Monday, April 25, 1932.

Session resumed pursuant to adjournment, Hon. O. R. Luhring, Justice, presiding.

* * * * *

(Law. No. 77664.)

Upon consideration of the motion filed herein for a new trial it is ordered that said motion be, and the same is hereby overruled and judgment on verdict ordered.

Wherefore, it is considered that plaintiff recover of defendant herein the sum of Five Hundred Dollars (\$500.00) with interest thereon until paid, together with costs of suit to be taxed by the clerk and have execution thereof.

20 To the foregoing judgment the defendant by its attorney, in open court, notes an appeal to the Court of Appeals of this District; whereupon, an undertaking to act as a cost bond is hereby fixed in the sum of One Hundred Dollars (\$100.00) with leave to deposit Fifty Dollars (\$50.00) cash with the clerk in lieu thereof, and a further undertaking to act as a supersedeas bond is hereby fixed in the sum of One Thousand Dollars (\$1000.00).

Memoranda.

(Law. No. 77664.)

May 13, 1932.—Undertaking (supersedeas) approved and filed.

May 26, 1932.—Bill of Exceptions filed.

Assignment of Errors.

Filed May 26, 1932.

* * * * *

Now comes the defendant-appellant herein and assigns for error the following matters:

1. The verdict and judgment in each case are contrary to the evidence.

2. The verdict and judgment in each case are contrary to the law.

3. The evidence is insufficient to support the verdicts and judgments or either of the said verdicts and judgments.

4. The Court erred in not granting the defendant's motion for a directed verdict at the close of all the evidence in each case.

5. The Court erred in giving to the jury the following instruction:

Your attention is also invited to another traffic regulation which was in force and effect at that time and which provided that no vehicle shall proceed over any public highway in the District of Columbia recklessly or at a rate of speed greater than is reasonable and proper, having respect to the width of the highway, the use thereof, and the traffic thereon, or so as to endanger any property or individual, or so as to unnecessarily or unreasonably to endanger the public on the highway. You will inquire whether the defendant company, through its driver, violated any of the provisions of this regulation. If you find from the preponderance of the evidence that the defendant did violate this regulation, then you are warranted in finding that the defendant was negligent, and if you further find that the negligence was the proximate cause of the accident and the resulting injuries sustained by Mrs. Moorehead, then your verdict should be for the plaintiffs.

6. The verdict and judgment for the plaintiff Bessie M. Moorehead are excessive.

7. The Court erred in denying the defendant's motion for a new trial in each case.

8. The Court erred in entering judgment on the verdict in each case.

JOHN W. FISHER,
Attorney for Defendant-Appellant.

Service of a copy of the foregoing assignment of errors acknowledged this 26th day of May, 1932.

STANLEY D. WILLIS,
Attorney for Plaintiffs-Appellees.

Supreme Court of the District of Columbia.

Thursday, June 30, 1932.

Sessions resumed pursuant to adjournments, Hon. Chief Justice and Associate Justices presiding.

* * * * *

Come now the parties hereto by their respective attorneys of record and thereupon defendant, by its attorney of record, in each of the above entitled causes submits to the court the Bill of Exceptions taken at the trial of these causes and prays that the same be signed and made of record. nunc pro tunc, which is accordingly done.

LUHRING,
Justice.

Designation of Record.

Filed May 26, 1932.

* * * * *

Now comes the defendant-appellant herein and designates the parts of the record which it desires to be included in the transcript as sufficient for the determination of the questions to be presented on the appeal, as follows:

1. Declaration of plaintiffs.
2. Pleas of Defendant to declaration.
3. Order consolidating cases for trial.
4. Verdicts of jury.
5. Memorandum showing filing of motion for new trial, denial of motion, and judgments.
6. Notation of appeal.
7. Order fixing appeal bonds.
8. Memorandum showing approval and filing of supersedeas bonds.
9. Order consolidating cases for purposes of appeal and extending time within which to file Bill of Exceptions, Assignment of Errors, and Designation of Record.
10. Assignment of Errors.

11. Bill of Exceptions.

23 12. This Designation of Record.

JOHN W. FISHER,
Attorney for Defendant-Appellant.

Service of a copy of the foregoing designation of record acknowledged this 26 day of May, 1932.

STANLEY D. WILLIS,
Attorney for Plaintiffs-Appellees.

Memorandum.

July 29, 1932.—Orders of Court of Appeals in Law Causes 77,663 and 77,664, extending time to file transcript of record, to and including September 20, 1932, filed.

24 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages, numbered from 1 to 23, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 77663 at Law, wherein Bessie M. Moorehead is Plaintiff and American Ice Company, a corporation, is Defendant, and in cause No. 77664 at Law, wherein Robert S. Moorehead is Plaintiff and American Ice Company, a corporation, is Defendant, as the same remain upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 16th day of September, 1932.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

25 In the Supreme Court of the District of Columbia.

At Law. No. 77663.

BESSIE M. MOOREHEAD

v.

AMERICAN ICE COMPANY.

At Law. No. 77664.

ROBERT S. MOOREHEAD

v.

AMERICAN ICE COMPANY.

Bill of Exceptions.

Be it remembered, that at the trial of these causes before Mr. Justice Lohr and a jury, duly empaneled and sworn to try the issues herein, which trial began on April 8, 1932, and ended on April 11, 1932, proceedings were had and evidence adduced as follows:

Appearances:

For plaintiffs: Stanley D. Willis.

For defendant: John W. Fisher.

Earl C. Graves, witness for plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Willis:

I am a member of the Metropolitan Police Force. I was so engaged on January 31, 1929. On that day, about two o'clock in the afternoon, I was near Thirteenth and Pennsylvania Avenue when an accident occurred. I was walking north on the west side of Thirteenth street, south of Pennsylvania Avenue. I was just about alongside of the Southern Railway Building. The volume of traffic was moving east and west at that time on both the north and

south sides of Pennsylvania Avenue. I saw a truck going west on Pennsylvania Avenue, and making a right hand turn north into Thirteenth Street. The truck turned in about ten feet from the east curb line. At that time I heard a noise and saw some people running and I started over there myself and when I got there, an automobile had stopped and they were putting a lady in the car. When the

26 truck made the turn into Thirteenth Street I would judge it was going fifteen to twenty mile an hour.

I did not see any pedestrians in that portion of Thirteenth Street at that time. After the accident, I went over to the point of the accident. I noticed some skid marks or slush marks on the ground. As near as I can remember the skid marks commenced about ten feet north of the pedestrian crosswalk. There is either a line of buttons or a crosswalk there. I observed blood marks about ten feet west of the east curb and about six or eight feet north of the pedestrian crosswalk. I believe the skid marks continued a distance of twenty-eight or thirty feet up Thirteenth Street. I paced it off at that time and put it in the incidental book at the station house. The skid marks were running north and south. The automobile was a truck with solid tires. It was loaded with coal. It was snowing that day but the snow was melting as it hit the ground. The street was wet. I have no interest in this case.

Cross-examination.

By Mr. Fisher:

I remember testifying in the police court in the case of Joseph Warren. I arrested him. I think he was the driver. I believe I testified the following day—no, I believe it was postponed on account of the lady being injured. That was about three years ago. I do not remember that Mr. Chester H. Gray represented the government there. He was prosecuting attorney at that time.

Question. Do you remember being asked this question:

“Do you remember the weather conditions at or about the time you investigated this accident.”

Answer. No, I do not remember.

Question. Do you remember making this answer?

“Yes, sir, it had been snowing, and the pavement was warm, and the snow was melted. The flurry of snow had stopped. The pavement was wet from the snow, and I noticed the tracks of the truck did not indicate any skid; it was a perfect tread of the truck tires.”

Answer. I remember part of it. I do not remember all of it. I do not remember saying it was a perfect tread. I do remember saying it was snowing.

27 I would not say I did not so testify but I do not remember saying it was a perfect track. I hardly believe I said that the tracks of the truck did not indicate any skid. I believe my testimony to be there was a skid mark of the truck. As I remember now, the skid marks were between twenty-eight and thirty feet. I know it was a considerable distance beyond where the lady fell from where they began until they stopped. They began about six feet north of the pedestrian crosswalk on Thirteenth Street. When I started running over there, there was an automobile coming south on Thirteenth Street and a couple of men were putting the lady in it when I got over there. I did not see her lying there. When I saw the truck coming west on Pennsylvania Avenue and turning into Thirteenth Street I was then on the south side of Pennsylvania Avenue going north on the west side of Thirteenth Street. I was about on the building line of the Southern Railway Building. There was traffic passing on both sides between me and the truck at the time. For a second my vision might have been obstructed from the truck. The traffic was not heavy but normal. There were cars on both sides close to the intersection at one time. There was practically no traffic going north and south on Thirteenth Street, but maybe this one car coming south that picked the lady up. Cars were parked there north of Pennsylvania Avenue on the east side. I did not count them. There were more than one. I would say six or eight were parked from the crosswalk line north to E Street beginning from the crosswalk on, three or four feet, maybe, each way, and close to the curb. At that time I did not see any other cars turning north into Thirteenth Street from Pennsylvania Avenue where the truck turned in. There was no traffic turning north then. I think at that time I stepped off the

distance of the blood marks from the crosswalk. I always step off those things after an accident and the incidental book at the station house will show the exact distance. It was approximately six feet north of the crosswalk and ten feet west of the east curb. That is the best of my memory. I think it was about two full steps north of the crosswalk and three full steps west of the east curb.

Redirect examination.

By Mr. Willis:

When I say crosswalks I refer to the white lines. When I got over there I saw Mr. Robert S. Moorehead there. I took him to the Emergency Hospital. His wife had preceded him.

Recross-examination.

By Mr. Fisher:

The crosswalk lines are marked by white lines. They are two broad lines six inches broad running from one curb to another, indicating a crosswalk for pedestrians to walk across. I judge the lines are about six feet apart.

Redirect examination.

By Mr. Willis:

There was no officer in control of the traffic at that particular time and point. The blood from where they picked the lady up showed she was about six feet north of the crosswalk. She was not in the crosswalk, the white lines. The blood indicates she was lying six feet north of the north pedestrian line nearest E Street. E Street is north of Pennsylvania Avenue.

Fred A. Smith, witness for plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Willis:

I am connected with the real estate business of Floyd E. Davis & Company. My office is at 723 12th Street, N. W. On or about January 31, 1929 I witnessed an accident at or near the intersection of Thirteenth and Pennsylvania Avenue. I was with William R. Ellis at that time. He was driving and I was in his car. Mr. Ellis was seated on the left hand side and I was on the right hand side. We were going south on Thirteenth Street, north of Pennsylvania Avenue. We were going to the Army War College which is south of this particular point. My office being on Twelfth Street and his being on Thirteenth Street, we happened to drive down Thirteenth Street because it was open at that time; it was a much better street than Twelfth.

That is how we happened to be on Thirteenth Street.
29 We drove down to the intersection of Pennsylvania Avenue. My recollection is that traffic was moving east and west on Pennsylvania Avenue. The car in which we were riding had come to a complete stop. We were either going very slow or were standing still. This was on account of the traffic going east and west on Pennsylvania Avenue. I think there were other automobiles on that side of the street with us. I am not sure but I think there was one stopped to the right of us. I am not sure whether there were any in back of us or not. The automobile I was in was just north of Pennsylvania Avenue. We were approximately at or near the building line of Pennsylvania Avenue. At that time I saw an automobile truck of the American Ice Company. The first time I saw it, it came up Pennsylvania Avenue going west. It turned to right around Thirteenth Street. There was a rather heavy set gentleman and a lady much smaller than the gentleman, crossing the street.

The truck at first looked like it would hit both of them but my recollection is that the gentleman ducked out of the way. I do not think that the truck hit the lady and knocked her down, but I think in her excitement she either shoved against the truck or got excited and fell down and the rear hind wheels rolled over the shoe part of her foot. I think it was the right rear wheel. At the time they were struck by the truck the two people were about one quarter of the way across Thirteenth Street from the east curb line. The street is about sixty feet wide. I do not believe I could say whether the people were south or north of the curb line or the building line of Pennsylvania Avenue. I do not think I estimated just where they were. They were crossing the street. The car I was riding in had stopped. They were crossing in a fashion which would have permitted them to pass in front of our car. There were other pedestrians crossing the street there I think. I would not say the truck was speeding. It was just going at an ordinary rate of speed, I should say. The truck rolled over Mrs. Moorehead's foot. I could not say the truck knocked her down.

30 When I found her she was on the ground. I assisted in picking Mrs. Moorehead up. Mr. Ellis and another gentleman, whom I do not know, helped. He was in the back seat and held her while we were going to the hospital. I think Mrs. Moorehead was unconscious when she got into the automobile but before she got to the hospital she was conscious. It was a semiconscious condition. She was suffering pain and moaning. I did not observe any blood or cuts about Mrs. Moorehead's body. I think her foot was bleeding. I know that the shoe was crushed. I will not be positive it was bleeding but it seems to me it was. After the accident I remember the truck standing above where we picked Mrs. Moorehead up. It was not a great distance. I would say twenty or twenty-five feet. That was up in Thirteenth Street somewhere. The truck was going up Thirteenth Street. My recollection is it came around Pennsylvania Avenue and up Thir-

teenth Street. My recollection is that the truck had coal in it. It was a coal truck probably a ton and a half or two tons. It had solid tires. It was about one thirty in the afternoon and I am quite sure it was raining a little bit. I may be wrong about it but my recollection is that the streets were damp. I can not say that I heard any signals or horns given by the truck at that particular time. I cannot say that I did. I do not remember any. I would not say whether they were given or not. I do not recall having heard any signals or horns.

Cross-examination.

By Mr. Fisher:

We were going on straight across Pennsylvania Avenue. At the time of the accident we had just gotten there. We probably had not stopped when this happened. We were driving along in a Packard car on Thirteenth Street. I saw Mr. and Mrs. Moorehead and the truck about the same time. I realized what a terrible situation it was and the gentleman and the lady I knew were in danger. It looked like there was going to be a bad accident. They were close to one another. I saw the man draw back. I would say they were about twenty or twenty-five feet from the curb. They were walking west on Pennsylvania Avenue and were twenty or
31 twenty-five feet from the curb on the east side of Thirteenth Street. I am wrong about that. I should have said ten feet. They were ten feet from the curb. When I testified a while ago that the accident occurred about one-fourth of the way across Thirteenth Street, I meant about half way between the white line of Thirteenth Street and the curb. By the white line I mean the line down the center of the street. They were about half way across between that line and the east curb line which would be about ten or fifteen feet. They had not crossed the white line and had not gotten on the west side of Thirteenth Street, west of the middle. Pennsylvania Avenue slants

but I would say they were south toward Pennsylvania Avenue because the west side of Thirteenth is farther north than the east side of Thirteenth Street and they were cutting right across the street. They were not coming directly at us but would have passed right in front of our car. I did not pay any particular attention to the marks on the street after the accident. I was interested in getting the lady to the hospital. Mrs. Moorehead was lying just exactly opposite from the way the truck was going. If not, the truck would have gone over her body. She was lying across Thirteenth Street with her head toward the south, toward Pennsylvania Avenue. Her head was toward the east curb of Thirteenth Street. It was right on the corner. I could not give the exact position. I could not tell you whether it was five feet from the corner but her head was toward the curb of the east line of Thirteenth Street. She was lying across from east to west in a general direction of right angles with Thirteenth Street. I would say her head was ten or fifteen feet from the east curb. It is my recollection we picked her up from the street ten or fifteen feet from the curb. The truck passed between us and Mrs. Moorehead. The truck was what I would call in the second line of traffic. It was right on the white line, down the center of the street. When I say it was in the second line of traffic I included the cars that were parked. There were cars parked along the east side of Thirteenth Street there. The line outside the parked cars would be what I have described as the second line. I could not say the front

32 end of the truck struck Mrs. Moorehead. She was excited. At first I thought the truck would not hit the lady at all. I thought it would go along without passing over her foot. My recollection is the right rear wheel passed over her foot. When I saw Mrs. Moorehead draw back Mr. Moorehead went one way or the other but I could not tell you in which direction he went. I think he drew back and went toward the curb. Mrs. Moorehead was excited and I believe—I would not like to say the truck hit her

or that she shoved against the truck, but I know she fell down and the wheel of the truck went over her foot. I did not observe any cars turning the corner ahead of the truck. The truck was the only car I observed coming around the corner. When I say the truck was going at an ordinary rate of speed I mean it was going twelve to fifteen miles an hour, judging from the way I drive my car. I do not think it was going over twelve or fifteen miles and more nearly twelve.

Redirect examination.

By Mr. Willis:

I have no interest whatever in this case.

A. R. Shands, witness for plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Willis:

I am a regularly licensed and practicing physician. I have been so engaged for more than forty years. I am a graduate of the University of Maryland. I have practiced in the District of Columbia thirty-eight years.

Mr. Fisher: I will admit the doctor's qualifications.

I am identified with the Emergency Hospital and George Washington, but my work has been devoted chiefly to the Emergency Hospital for more than thirty years. I work at orthopedic surgery. On or about the thirty-first day of January, 1929, I treated Mrs. Bessie M. Moorehead, the lady who sits here. She came in on January 31st and was discharged on February 22nd. That is the time she was under my care in the Emergency Hospital. She was brought in for injuries received to her feet and ankles. She had had her foot crushed. Something had passed over her foot and several of the small bones of

the foot were crushed. She also had a laceration on the left side of her forehead and bruises and contusions. The one on the forehead was the chief one, with the exception of the injury to the feet, which caused a great deal of pain and suffering. The X-ray showed a fracture of numerous bones. The Doctor who was to testify with regard to the X-ray can show exactly the bones which were fractured. I am describing it merely in a general way. The bones in both feet were broken. I think the X-ray report here will show that, if I may read it.

(The Witness reads memorandum.)

The bones I have referred to are in the instep. The ankle is where the leg bone joins the foot. The injuries were extremely painful and the feet were very much swollen. I do not know whether the feet under those conditions would be sensitive to a sheet touching them. While Mrs. Moorehead was in the hospital a cradle was placed over her feet to keep the weight of the bed clothes off the feet. I saw her practically every day, or at least three or four times a week. I could not do anything until the swelling began to subside. Then her feet were strapped in plaster and kept in a recumbent position until she left the hospital. It was some months after she left the hospital on February 22, 1929, that I saw her again. It must have been the following fall. The letter which I wrote you on April 4, 1929 was the report that was written a short while after she left the hospital. I really do not know whether that was the last time I saw her. It was about six weeks afterwards. I suppose that was the last time I saw her. I recall seeing her the following fall with Dr. White. That was the last time until this week. I examined her three days ago. When I examined her on April 1, 1929, she was just convalescing from the injury. She could not walk. Either or both of the feet were swollen at that time. They were painful on manipulation. The same condition did not exist to such a marked degree in September, 1929. There was a marked improvement. There was some disability, of course. I examined her Tuesday, three days ago, in my office. Her left foot has practically recovered. There might be some slight limitation of motion or discomfort in walking, but the motion of the foot seemed to be practically

normal. The right foot, she has the normal range of motion up and down and in and back, I should say, fifty per cent of normal voluntary motion. In the front of the foot, right where she had a fracture at the head of the bone it has injured greatly the structures maintaining the arch. Right along here (indicating) is where the bone is crushed and there is not more than fifty per cent of the normal range of motion. The disability she has is inability to move it up and down which impedes her walking and also in going up and down steps. In other words, she has not the proper swing to the foot. She has not the spring to the operation of the foot which corresponds to that of the fingers. It is due to the crushing of the bones and destroying the normal contour of the arch. I think she has made all of the recovery she will make. I should say she had made the maximum improvement within the first twelve or eighteen months. I have rendered my bill. It was \$125.00. It has been paid.

Cross-examination.

By Mr. Fisher:

The direction from which this injury was received could be either from above, down, or cross-ways. My impression was it occurred this way (indicating). It would be impossible to tell from the nature of the injuries. There is some enlargement of the bones. You cannot reduce the enlargement because of new bone forming. I should say that is permanent. She has made the maximum improvement. Of course, a person with an injury of that sort is handicapped, but a person forgets about it after a while, they become so accustomed to it. You can get accustomed to going with one arm.

William R. Ellis, witness for plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Willis:

I am in the real estate and insurance business at
35 1539 Eye Street, N. W. On January 31, 1929, Mr.
Fred A. Smith and I were going down Thirteenth

Street to the War College in a car. Mr. Smith's business is real estate, the Floyd E. Davis Company. I was driving my Packard automobile at the time. It is a left hand drive. Mr. Smith was on the front seat next to me. We were going south on Thirteenth Street. I do not remember which way the truck was moving on Pennsylvania Avenue at that time. There were two cars ahead of me. I was moving particularly slow because there was traffic ahead of me. My car was moving. It might have been going five, six, seven, or ten miles an hour at the time of the accident. There were two cars in front of me. I saw a truck going north on Thirteenth Street. I heard a woman scream and I saw her knocked down. I do not know where the truck was coming from. I noticed the woman when she hollered and the truck had knocked her down. She was bleeding. She was above the building line and curb line of Pennsylvania Avenue. I think she was above the line of the sidewalk space. I would say she was a half car length above. She was a little over a car length out into Thirteenth Street from the east side. After the accident the truck stopped fairly promptly. It was a little bit ahead of where it struck her. It stopped up in Thirteenth Street. It was in the second line of Thirteenth Street, the first is the curb line. I do not remember how far north of the building line the truck was. I can not say definitely, I can just surmise. I would say it was about a truck length and a half from the building line. I would say about fifty feet. It was an Autocar truck with solid tires. I did not get out of the automobile. I think Mr. Smith did. The lady who was knocked down was placed in my automobile. She was carried into the car by a stranger and Mr. Smith. I took the lady to Emergency Hospital. Mr. Smith and I left our names at the hospital and then went to the War College. In going to the War College my idea was to cross Thirteenth Street and to continue south. I think it was cloudy that day and the streets were dry. I did not see the truck for any appreciable period of time prior to the time I saw it knock Mrs. Moorehead down. The truck was

36 going slow when it struck her. As I remember, the front wheel of the truck ran over her. She was on the right hand side, the east side between the truck and the east curb. I did not go over to observe the position in

which she was lying at that time. In my car her face was bleeding. Her feet were not bleeding. She said her feet hurt. She was conscious but had a chill in the car. I have no interest in this case.

Cross-examination.

By Mr. Fisher:

In my estimation of distance in terms of car length, I was estimating a car being about twenty feet long. I was talking about the truck and not a car. All of the estimates I have made have reference to the truck. In my estimation of car length I assume that they run from about a hundred and twenty to one hundred and forty inches; I would say about fifteen feet. This is from bumper to bumper. When I say a car length I mean fifteen feet and by a car and a half I mean twenty-two and a half feet. When I say a car length I mean a car fifteen feet long. To straighten out my statements I would say that Mrs. Moorehead was about fifteen feet above the line of the side walk space when I saw her lying there. I did not help to pick her up. When I said the truck was a length and a half north of the building line I was talking about the truck length and was assuming a truck of twenty feet in length. I meant a distance of about thirty feet. At the moment the accident occurred, that is, the moment that Mrs. Moorehead came in contact with the truck, my car was still moving south on Thirteenth street. I did not stop before the contact between the car and Mrs. Moorehead. I stopped when the accident happened. I should say I stopped about two car lengths from the line across Thirteenth Street along the north side of Pennsylvania Avenue, that is, two cars north of the pedestrian line. I was practically even with the point where the accident occurred, that is, Mr. and Mrs. Moorehead were substantially directly across the street east of me. I saw the actual contact. I heard a woman scream and I looked over there and she fell
37 and the front wheel ran over her foot. She fell east toward the curb she had come from. I saw her lying there in the street with her feet out in the street and her head toward the curb, practically at right angles with

the curb. At the time of the actual contact the truck was between me and Mrs. Moorehead. It was the right front wheel which I saw come in contact with Mrs. Moorehead. The truck struck her in the waist as I remember. She fell directly backward at right angles with the truck. My attention was not directed to the truck at all until I heard Mrs. Moorehead cry out. I think I saw a man close to Mrs. Moorehead. I do not remember where. He was either ahead or beside her. He was crossing at the same time. When she fell there was a man substantially directly north of her. I think he was crossing at the same time. At the moment I saw the car come in contact with Mrs. Moorehead he stepped back, as I remember it. I did not observe cars parked along the east side of Thirteenth Street. When I speak of three traffic lines I mean one line along the curb as the first; that is, I mean there were three lines from the curb to the line which runs down the middle of the street, and this truck was in the middle of those three lines. There is room for one line of cars along the curb, one toward the middle of the street, and one in between. The one in between was the one where the truck was.

Redirect examination.

By Mr. Willis:

Assuming one line to indicate parked automobiles, the truck was in the second line.

Recross-examination.

By Mr. Fisher:

If there were cars parked along the east curb, this truck would be in the line of traffic nearest the parked cars. Mrs. Moorehead was in pain after she was put in my car. She was say- "Oh, oh" like she was in pain. She said her feet hurt her shortly after we started off.

Robert S. Moorehead, witness for plaintiffs, being first duly sworn, testified as follows:

38 Direct examination.

By Mr. Willis:

I live at 4518 Gratz Street, Philadelphia, Pennsylvania. I was living there on January 31, 1929. I live with my

mother and my wife and child. Mrs. Bessie M. Moorehead is my wife. My wife and I came to Washington on January 31, 1929. We made a visit to the U. S. Capitol. After visiting the Capitol we intended to walk to the White House. We walked along Pennsylvania Avenue and had walked all the way from the Capitol to Thirteenth Street. We intended to walk across Thirteenth Street and continue on Pennsylvania Avenue toward the White House. We had no occasion to go north on Thirteenth Street. I imagine we were walking about the middle of the sidewalk on the north side of Pennsylvania Avenue. When we reached Thirteenth Street, traffic was moving on Pennsylvania Avenue going in the same way we were walking, that is, toward the White House. There were parked automobiles to our right along the curb line on Thirteenth Street. I saw no moving automobiles on Thirteenth Street, at the time we stepped off the curb. At that time traffic was going west in the same direction we were going. There was nothing to indicate to me that any automobile or truck was going to make a turn at that particular point. We had gotten about twenty feet out into Thirteenth Street walking in a continuation of the sidewalk line. I heard no horn whatever. When about twenty feet into Thirteenth Street I glanced up in a hurry and seen the truck which was about on us. The truck was possibly three or five feet from me at that time. As I recall, I immediately turned to go back to the curb line and put my hand out to grab my wife's arm but evidently missed. The truck struck my wife. When I got to the other side of the truck she was lying on the ground. After the collision, Officer Graves arrived on the scene. I did not measure out how far the truck went after colliding with my wife but Officer Graves did. It seems to me there were about four or five men already picking up my wife by the time I got around the truck after the truck had passed. My wife was placed in an automobile and taken to Emergency Hospital. Officer Graves, after getting some details took me on the

39 trolley car to Emergency Hospital. At that time I believe my wife was either unconscious or semi-conscious. That was on the street before she went to the hospital. There seemed to be blood on her face. The shoes were off her feet. They had been knocked off her feet. My wife remained in the hospital until Washing-

ton's Birthday, February 22, when I came down to get her. During this period I visited my wife at the hospital. I came down every Saturday morning and stayed until Sunday night. After my wife got home she was still confined to her room. She was treated in Philadelphia by our family doctor, Dr. Kanders. On April 1, 1929, I came to Washington with my wife. She was examined by Dr. Shands at that time. It was the custom and habit of my wife and myself to take long walks prior to this accident, particularly on Sundays and in the evening. At the time of this accident we had one child, about twenty-two months old. My wife and I would go out with the child. Since the accident we have not been able to take walks of any length. We take short walks. I have paid some bills in connection with my wife's illness. I paid Dr. Shand's bill of \$125; Dr. Kander's bill of \$125; the Emergency Hospital bill of \$100; and Groover, Christie & Merritt's bill of \$20.00 for an X-ray picture. I also paid \$3.75 for repairing my wife's watch; \$30.00 for repairing her fur coat, and I also paid a bill of the Powhatan Hotel of \$6.00 per day.

The Court: They total about \$404.75.

Before this accident my wife attended to all of the work incident to the maintenance of our household. We did not employ a maid. After the accident my wife was not able to perform those duties. My mother was at the house and we were unable to hire any help and my mother did the work after the accident. I would say it was June at least, before my wife could start in with the light work of the house.

(Further examination of Robert S. Moorehead deferred temporarily to permit the X-ray doctor to testify.)

Edgar M. McPeak, witness for plaintiffs, being first duly sworn, testified as follows:

40 Direct examination.

By Mr. Willis:

I am a duly licensed and practicing physician engaged in X-ray and radium work. I am associated with Groover, Christie & Merritt. On or about January 31, 1929 I had

occasion to take an X-ray picture of Bessie M. Moorehead, at the instance of Dr. A. R. Shands. I have the report of the X-ray pictures and the pictures with me at this time. Mrs. Moorehead was referred to us January 31, 1929 for an examination of both feet.

Witness thereupon read X-ray report as follows:

X-ray Report, Mrs. Bessie Moorehead, January 31, 1929.

X-ray of both feet. Examination of the left foot shows a fracture through the base of the third metatarsal with no displacement. The position is satisfactory. There is also a fracture through a sesamoid on the posterior medial aspect of the distal end of the first metatarsal with no displacement of the fragments.

Examination of the right foot shows a transverse fracture through the middle third of the scaphoid and apparently one through the second cuneiform. There is no appreciable displacement of these fragments. In addition, there is a comminuted fracture of the distal end of the first phalanx of the second toe and a similar condition of the first phalanx of the third toe. There is rather marked dorsal displacement of the distal fragments of the second toe.

(Signed)

E. M. McPEAK, M. D.

I have two X-ray views of each foot. One of them is the posterior view of the left foot and the other is the lateral view. A fracture shows there (indicating) in the front view, and there (indicating) in the lateral view. No displacement is shown. In addition there is a fracture in this bone (indicating). There is no displacement there. With respect to the right foot, the first picture shows a front view and the other a side or lateral view. Here (indicating) there is a transverse fracture. In this view it shows the displacement in the second toe. I hold in my hand the bones of a left lower leg and foot. In the left foot there was a fracture through the base of the third metatarsal, and in addition, on the left side there was a fracture in this little bone here (indicating). In the right foot there was a transverse fracture through the bone right here (indicating) and there was in addition a fracture through this bone right here (indicating) and there was in addition a fracture through this bone here (indicating).

There was also a fracture under the phalanx of the second toe and a similar fracture of the phalanx of the third toe.

Cross-examination.

By Mr. Fisher:

In general it is true that the displacements were in the toe bones and the other bones were not displaced.

Robert S. Moorehead (resuming):

Cross-examination.

By Mr. Fisher:

We were walking along the north side of Pennsylvania Avenue about the middle of the side walk. This was before we reached Thirteenth Street. We crossed Thirteenth Street right like on a straight line from the way we had been walking up Pennsylvania Avenue, possibly a
41 little to the right of the middle of the side-walk. The store windows would have been on the right hand side. We were closer to the stores than we were to the outside. I saw crosswalk lines as we started across. I imagined we were crossing within the lines. I said I imagined—I could not say yes but as far as I know I was at that white line which was on Thirteenth Street at that time. As far as I know I was at the line or possibly a little to the right side of the line. I think I was pretty close. I would say within a foot or so. Mrs. Moorehead was walking on my right hand side. We were right together walking up Pennsylvania Avenue. The parked automobiles which I saw there I imagine were ten feet to the right hand side. There may have been traffic coming south on the other side of Thirteenth Street. I did not see the truck going north on Thirteenth Street. It was practically on top of us when I first seen it. It was to the left hand side, a foot or so away. I imagine I first seen it when we were very close to the neighborhood of the center of the truck in front. We were directly in front of it. I imagine Mrs. Moorehead and I were abreast at that time. I happened to glance over and saw the truck. I swung around and tried to jump and made an effort to get Mrs. Moore-

head. I could not explain what caused me to look up at this particular point. It was an unconscious movement as far as I was concerned; there was no particular reason.

Bessie M. Moorehead, witness for plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Willis:

I live at 4518 North Gratz Street, Philadelphia. I am the wife of Robert S. Moorehead. I have two children, one is five years, the other is nineteen months old. At the time of the accident I had one child, at that time twenty-three months old. My father-in-law died and my mother-in-law was alone, so we went to live with her and I took the household over. I took full charge of the house and attended to all duties. I never had a maid in my employ. I am thirty-seven years old. I came to Washington with my husband on January 31, 1929. We had been down to visit the Capitol and were walking up Pennsylvania Avenue. We had walked up to the point of the accident. We had stopped in a five and ten cent store to get a toy for the boy. We were on Pennsylvania Avenue all the time and were going to the White House. When I arrived at the intersection of Thirteenth Street my husband was walking along with me. He was on the left side. I should judge we must have been near the center of the sidewalk. When we arrived at Thirteenth Street, traffic was running west on Pennsylvania Avenue in the same direction we were walking. After observing that condition we stepped off the curb at Thirteenth Street and had gotten about twenty or twenty-five feet into the street before anything happened. After that I do not remember anything, to tell the truth. The next clear thing was when my husband came to the Emergency Hospital and I said, "what is this all about." I was in the hospital twenty-three days. I left on February 22nd. While I was in the hospital I was treated by Dr. Shands. Toward the end of the last week I tried to walk around the bed to see if I was strong enough to stand. When I found myself in the hospital I had a deep cut over the left eye and I was black and blue all over, down my side, and my fingers

and hands were cut, and also my knees. I found out afterwards my feet had been crushed. I had severe pain. They kept something over my feet for the first two weeks and then I had to have the nurse split the sheet because I could not stand the pressure on my feet. My feet were cut and terribly swollen and had such bleeding spells. I believe Dr. Shands saw me more than once the first couple of days. My feet were X-rayed. I was so excited I do not remember who took the pictures. On February 22nd, my husband came to Washington to get me. Before that he had visited me at the hospital over the week ends. He did not bring the child. On February 22nd, I left the hospital. I was put in a wheel chair and pushed to the elevator and taken to the first floor and there pushed to a taxicab which took me to the Union Station. We had a wheel chair there also. At the station in Philadelphia we also used a chair to get to a taxi-
43 cab and the driver and my husband carried me into the house. On arriving at my home I went to bed and remained there several days, then I sat up for a couple of days and then was brought down to the living room. I could do light household duties. My husband would bring me down. When I sat in the living room downstairs my feet were kept in an elevated position as Dr. Shands had warned me. I had gotten a box and would put my feet across the box. I do not know just how long I sat around that way. The first time I can remember going out was the Sunday before April 2nd. On the first of April I came to Washington to see Dr. Shands. Up to that time I continued to sit in the living room. After I returned to Philadelphia from seeing Dr. Shands on April 1st, I was hampered in going about my normal duties. I did not sit around but did little light duties such as taking care of the baby. That condition continued until the latter part of May. I did not do any walking until then. I still was not feeling good. My nerves were a wreck. My mother was in Atlantic City, and I went down to stay with her. I really did not start until the following fall, the fall of 1929. My mother-in-law still has the best part of the work to do but together we manage to accomplish it. My husband and I took walks before the accident. There was a park near our home and I used to go over there nearly every chance I got. Since this accident my husband and I have not been able to indulge in the walks

we used to take. I still suffer difficulty with my feet. I have something like a dull, dead pain. Right at the present time, I have it; anything that makes me nervous or upset seems to affect my legs. When I step down a curb, I do not seem to grip but slip. I have the same difficulty in walking upstairs. If I step on a cobblestone I can not stand it. My feet are more tender now than they were before. My feet go to sleep. This is mostly when I am sitting awhile. I usually sit with my feet moving all of the time. Dr. Kanders attended me in Philadelphia. He came to the house to see me. I still had a bandage on when I arrived at
44 Philadelphia and he took the bandage off because it was too tight. He rebandaged it twice and then said I should have a massage treatment. He sent a young man to massage my feet and I had those massage treatments close to two months. After I arrived home on February 22d, the first bandage was so tight I had to send for him the next day. He removed it in about two days and then gave me massage treatments. I also had lamp treatments.

Cross-examination.

By Mr. Fisher:

I could not say I remember anything of what happened on Thirteenth Street at the time of the accident. I did not see the truck. I did not know what hit me until I was told. As far as I can say, we were in the center of the pavement when we were walking. I think I know. I mean the center of the sidewalk. Then as we walked into Thirteenth Street we continued across in a line. At the time of the accident I believe it was either snowing or drizzling slightly. It was two or two-thirty o'clock. When we left Philadelphia, it was nice. I can not remember noticing parked cars on the east side of Thirteenth Street.

Redirect examination.

By Mr. Willis:

The shoes you are showing me are the shoes I had on at the time of the accident. They are in the same condition as when given to me at the hospital.

(The shoes so exhibited to the witness were offered and received in evidence and marked "Plaintiffs' Exhibit No. 1", and given to the jury for their inspection.)

Arthur Reese, witness for plaintiffs, being first duly sworn, testified as follows:

Direct examination.

By Mr. Willis:

I live in Washington at 2503 Hamlin Street, N. E. In January, 1929, I was inspector of schools for the District. I was operating out of the District Building at Thirteenth and Pennsylvania Avenue on the afternoon of January 31, 1929. I was near the vicinity of Thirteenth and Pennsylvania Avenue. I was going from the Municipal Building back across Pennsylvania Avenue. I was crossing Pennsylvania Avenue going north on the west side of Thirteenth Street. I had gotten just across the tracks. I was in the safety zone. I mean one of the little boxes painted
45 with white lines north of the tracks. I was going across on Thirteenth Street and east on Pennsylvania Avenue. Traffic was moving west on Pennsylvania and I was waiting for the traffic to cease so it would permit me to get to the curb. While I was standing there I saw a truck come west on Pennsylvania Avenue. It was an ice or coal truck. When I first saw it, it was in the next block, forty or fifty feet east of Thirteenth Street, and there was other traffic moving west in front of the truck. I was in somewhat of a hurry and was waiting to get across and when that truck came I stopped. From the speed it was going I thought it was going to continue west on Pennsylvania Avenue. I thought it was going to obstruct my passage and so waited there. The truck turned north into Thirteenth Street. When it turned north it was west of the center of Thirteenth Street, I think. He was going a pretty good gait and in turning he surprised me as I thought he was going straight ahead. He was in the center of Thirteenth Street when he made the turn. I could not say exactly how fast he was going but when he was coming up there I would say he was running fifteen or eighteen miles an hour. He did not seem to check it any when he made the turn. He drove as though he was in a hurry.

There were some pedestrians crossing Thirteenth Street at that time. There was a lady there who I saw as I went across. When I first saw her she was lying down. I do not believe I can locate the place. I know as I went across there seemed to be a commotion. I saw some people moving pretty rapidly and I thought the truck had hit someone. I recognize the man, but the lady I do not remember seeing. After the impact, I would say the truck went thirty or forty feet up Thirteenth Street. I have no interest in this case at all.

Cross-examination.

By Mr. Fisher:

I did not see the actual collision. I do not remember having seen Mr. and Mrs. Moorehead before the accident. There were a number of people crossing at that time. Some had crossed before the accident occurred and others were coming along. I did not observe a white line in the center of Thirteenth Street. I could not say whether
46 there was one there or not. I could say as to the relative position of the truck on the street but as to there being marks, I could not say whether there were or not. I do not remember whether there were cars parked on the east side of Thirteenth Street. I do not remember seeing any traffic turn into Thirteenth Street except this truck. I do not remember seeing any come out of Pennsylvania Avenue nor crossing Pennsylvania Avenue. I do not drive a car. When I first came up I think the lady was still lying in the street. There were several people gathered there very shortly and someone was with the lady. I did not help pick her up. I could not place her position at the time of the accident or afterward.

(Mr. Willis read to the jury a section of the Traffic Regulations, as set forth in the declarations filed in these cases. The plaintiffs offered in evidence as Plaintiffs' Exhibit No. 2, a plat agreed upon by counsel, as representative of the intersection of Thirteenth Street and Pennsylvania Avenue, which plat was used by the witnesses in their testimony. The plaintiffs offered in evidence a copy of the traffic regulations which were set out and admitted in the pleadings,

and the same was received and marked Plaintiffs' Exhibit No. 3.)

Plaintiffs rested.

Motion for directed verdict submitted by defendant. Motion denied and exception by defendant.

Joseph Warren, witness for defendant, being first duly sworn, testified as follows:

Direct examination.

By Mr. Fisher:

I live at 517 6th Street, N. E. I drive a taxicab. On January 31, 1929, I was driving a coal truck for the American Ice Company. It was an Autocar. I remember an accident on Thirteenth Street near Pennsylvania Avenue on that day. I was driving the coal truck at the time. I had left the coal dump and was going to the twenty-five hundred block of Thirteenth Street. I had been at the coal yard and was leaving with two tons of coal on the truck. Before the accident occurred I was traveling west on Pennsylvania Avenue. I came onto Pennsylvania Avenue at the Peace Monument and traveled west until I got to Thirteenth Street. I turned north into Thirteenth Street. I was traveling down Pennsylvania Avenue at eight or twelve miles an hour. At Thirteenth Street I was traveling about five or six miles an hour when I turned the corner. I was

47 traveling about the middle way of Pennsylvania Avenue and I went over to the curb to turn the corner.

I was turning into Thirteenth Street about between the center and the east curb. There were cars parked at the east curb and I was next to those cars with a small space in between us. There is a safety zone where people walk across and there was a car parked near the line. The accident occurred between the car parked near the line and the next car. Just as I came around the corner this couple

started across the street and automobiles were parked on the east side of the street and automobiles were coming south on Thirteenth Street. They started across and when they found they could not get across they came back to the east side. When they got back, the lady broke loose from him and started back to the west side. I cut toward the curb to keep from hitting her, and my left front side struck the lady. I mean the fender. She was farther over in the street than I was. He did not get touched at all. He was on the right side. I pulled over to the side on Thirteenth Street to keep from obstructing the traffic. I do not know how far up I pulled but I was in the center of the lane and I pulled over enough to get over to the side and stop. Then I got down to help the lady but her husband and another man had picked her up. When I got back they were picking her up off the street. Then I waited until the police came. He took me to the station house. There were no marks on the pavement. I did not look on the street for marks of any kind. I did not remember seeing any blood there. There was quite a crowd of people there and there was not anything I could do. The police was afraid I was going to run. He held me right there. The police came in three to five minutes.

Cross-examination.

By Mr. Willis:

I have been driving a taxicab since about November 2nd. Prior to that, in 1931, I was working for a contractor. I worked for several contractors driving a truck. I worked for D. C. Butcher, P. T. McDermott, The Tri-State Trucking Company, Joseph P. Gamble, wholesale meat dealer. Also Charles Heitmuller and E. E. Mossburg. I did not drive for the ice company after the accident. I was
48 held in jail for thirty days. I have not worked for the ice company since. The company told me that they did not have any opening for me. Since then I have

worked for these different men whose names I have mentioned. The contracting jobs run out in the winter time and I left voluntarily. When I left one I would pick up a job in a week or two. I did not drive any taxicabs in between the truck jobs. I went from Butcher to the Tri-State, and so forth, and have been driving a cab since November. On the day of this accident I was driving on Pennsylvania Avenue, moving west in traffic and automobiles were going in front of me. The whole stream was going west on Pennsylvania Avenue. I had two tons of coal on a two ton truck. It had solid tires. It had been snowing a little and the streets were wet. When I was at the Peace Monument it was snowing slightly but it had stopped when I got to Thirteenth Street. Other automobiles were all around me. I was within five or ten feet from the car in front of me. I slowed down to make the turn. The cars immediately in front went straight across Thirteenth Street. Any traffic coming down Thirteenth Street did not interfere with the west bound traffic on Pennsylvania Avenue. All of the traffic was running westbound on Pennsylvania Avenue and the southbound traffic was awaiting an opening to get across. The lady and gentleman were on the east side of Thirteenth Street. They popped out from between two automobiles which were parked beside the east curb. Automobiles were parked from the building line up Thirteenth Street to E Street. When I drove up Thirteenth Street I could see there were several automobiles parked. I could see the traffic light on E Street. It was red. It had not come to amber yet. I could not see the traffic light when *when* I was on the Avenue. I first saw it after I crossed the safety zone. I mean the white line, the crosswalk. After I crossed the line I saw the traffic light at E Street and it was shining red. I did not count the automobiles parked on the east side of Thirteenth Street. I do not remember how many I saw. They popped out between the first and second automobiles parked on the east side of Thirteenth Street. There was one just above the line and another about there (indicating). When I saw the lady and gentleman the front of the truck had crossed the line entirely. I do not know about the back. I was to the right hand side of the center of Thirteenth Street. I made the turn wide enough to clear the parked cars. The gentleman had the lady by the arm when they

came out. They were both together. They came out running, just a dog trot. They started across to the west side and automobiles were coming on the west side so that they could not get through and they started back and she broke loose and ran again. After I made the turn into Thirteenth Street I was traveling five or six miles an hour. When I was coming up Pennsylvania Avenue I was going eight to twelve miles an hour. When I first saw this lady and gentleman pop out between the automobiles, I do not know how fast I was going. After I made the turn I stepped on it a little bit to pull up to the light. The light was red but there is a half block distance between the light and the corner. I thought it would change to green and I stepped on the gas a little. I was crawling around the corner and I stepped on it a little bit to ease up to the light. I did not have any speedometer on the machine. After I got around the corner I was not going fast. I was going about ten miles an hour. You can not stop a truck with two tons of coal on it short. With a truck with two tons of coal going eight or ten miles an hour you can not bring it to a stop very quick with solid tires, with a wet pavement. I knew the street was wet but I did not know anyone was going to pop out between the cars. I knew I had solid tires. Right after the rear of the truck cleared the corner, they popped out and that was the first time I saw them. They were then approximately twenty to twenty-five feet away from me when I saw them running, I thought they were going to cross the street, and when they started across the street, I cut my wheels in to the curb, but then they ran in front of me again and I straightened out, and when she ran out I cut in again and just the left side of the fender struck her and knocked her down, and I stopped. I was going to stop the truck but I did not know they were coming back. I was trying to stop at first but you can not stop short with two tons of coal on the truck.

50 (Examination by the Court:)

These people ran out from between two parked cars and they were going west across Thirteenth Street. They had gotten by me and if they had kept on I would not have hit them. They had run by me. Thirteenth Street is a narrow street.

The Court: No, it is sixty feet wide. I get the impression that if these people had kept on going, they would not have been hurt.

Witness: No, sir.

The Court: But something excited this lady?

Witness: The automobiles were coming down Thirteenth Street and he drew her back to the east side; he pulled her back; and when they got — the right side of the truck she broke loose again and ran back. She appeared to be excited.

I did not blow my horn. I did not have time. I do not know what wheel ran over her. There was no wheel that I know of. The truck was on the left hand side and not on the right. The husband was on this side (indicating) and she was on the left and my car was practically between the two.

Cross-examination.

By Mr. Willis:

I saw the lady lying in the street. I can not say I saw her feet but I stopped before the rear wheels cleared and I pulled to the side. Her husband and another man had her. I did not see any blood on the street. I was in no special hurry to get to that traffic light. It was afternoon. The twenty-five hundred block of Thirteenth Street is some distance north of where the accident occurred. I had not previously driven through Thirteenth Street a number of times. This was the first time I took that route up Pennsylvania Avenue and through Thirteenth Street.

Redirect examination.

By Mr. Fisher:

As I came down Pennsylvania Avenue I was traveling slow, not too fast. Most of the other cars were passing me. I was nearer to the curb than to the car line. When I
51 looked back before I stopped my car, after the accident, I saw Mrs. Moorehead there. She fell with her head toward the west, as far as I can recollect, when I looked back she was lying cater-corner-, with her head

toward the west or the southwest. That was at the moment I looked back.

Mr. Fisher: Attorney for plaintiffs has agreed that without calling the reporter I may read in evidence the following from a transcript of the testimony which was given by Officer Graves, who testified here this morning, at the hearing in the Police Court in the case of Joseph Warren who has just left the stand. The question is (reading):

“Do you remember the weather conditions at or about the time you investigated this accident?”

The Answer is:

“Yes, sir.” “It had been snowing and the pavement was warm and the snow had melted as it fell. The pavement was slightly damp. It was a perfect tread of the truck tires on the wet pavement.”

Defendant rested.

Mr. Willis: There is one possible piece of evidence I might wish to use. This driver on the stand distinctly and definitely stated there was a red light on Thirteenth Street that day. We are talking about January 31, 1929, and my recollection is those lights were not installed at that time. I would like to verify that.

The Court (after a recess): Ladies and gentlemen of the jury, counsel have agreed that as a matter of fact there was a traffic light at the corner of Thirteenth and E Streets, N. W., on the day of this accident. There was some question as to a traffic light at that point at that time. This light was turned on December 5, 1928 at ten o'clock, a. m., so it was there at the time of the accident.

There was something said in the testimony, or at least, it appeared that this colored driver was held in jail for thirty days. It is agreed by counsel that the thirty days in jail was not a punishment meted out to the driver,
52 but was spent merely in the ordinary course of administration of justice, in which defendants are held in jail awaiting trial. So that thirty days is not to be considered as a punishment meted out to him and you are not

concerned with what happened to this driver. That is a matter which does not concern you in determining the questions that I will present to you.

The foregoing is the substance of all of the evidence bearing upon the exceptions herein reserved, on behalf of defendant.

Whereupon defendant, by his counsel, moved the court to instruct the jury to render a verdict for the defendant in each case, and presented therewith, his written motion and instruction in each case. Motion denied. Instruction refused. Exception.

Thereupon, counsel proceeded to argue the cause, and upon the conclusion of the argument, the court charged the jury as follows:

53 Ladies and gentlemen of the Jury, by consent of both parties, we are engaged in the trial of two separate cases; one case is entitled Bessie M. Moorehead versus American Ice Company and is numbered 77663, and the other is entitled Robert S. Moorehead, docket No. 77664. The declarations of the plaintiffs are substantially the same in each case.

In the case wherein Bessie M. Moorehead is plaintiff, she seeks to recover damages in the sum of \$25,000, for personal injuries sustained by her which she claims were the result of an accident caused by the negligence of the driver of the defendant's truck. In the case of Robert S. Moorehead, he seeks to recover damages in the sum of \$10,000 for the loss of the society and services of his wife, Bessie M. Moorehead, due to the injury which she sustained as a result, which he claims, of the negligence of the defendant, through its driver, and for necessary expense incurred by him incident to the treatment and care of said injuries, and in making necessary trips incident thereto.

You are instructed that it is admitted by the defendant that its truck was driven by its employee in a westerly direction on Pennsylvania Avenue and around the corner of the intersection of the Avenue and Thirteenth Street, and in a northerly direction on Thirteenth Street. The defendant further admits that the truck collided with Mrs. Moorehead and that she fell to the street. It is also admitted by the defendant that at the time of the accident there was in force and effect in the District of Columbia

certain traffic regulations. These regulations I shall have occasion to refer to later in these instructions.

The claims of the respective plaintiffs are set forth in each declaration in two counts. The first count of each declaration specifically alleges that Bessie M. Moorehead was walking west on Pennsylvania Avenue and that on arriving at the intersection of Thirteenth Street, she observed the traffic moving west on the Avenue and proceeded

54 to cross Thirteenth Street in a continuation of the sidewalk lanes. It is alleged the defendant, through its driver, drove its truck around the corner of the intersection, suddenly, carelessly, and without warning, and without giving right-of-way to the said Bessie M. Moorehead, and in a northerly direction on Thirteenth Street, in a reckless manner and at a rate of speed greater than was reasonable and proper having regard to the width of said highway, the use thereof and the traffic thereon, and so as to endanger and injure the said Bessie M. Moorehead, in violation of the traffic regulations then in force, which provided that pedestrians shall have the right-of-way at all crosswalks, except those controlled by traffic officers and traffic devices, and which prohibited the operation of any motor vehicle over any public highway in the District of Columbia, recklessly and at a rate of speed greater than is reasonable and proper, having regard for the width of the highway, the use thereof and the traffic thereon, so as to endanger any property or individual.

It is further charged in this first count of the declaration that as a result of the negligence and carelessness of the defendant, acting through its driver, the truck was driven into and collided with Mrs. Moorehead, who was thereupon violently thrown into the street and injured.

The second count of each of the declarations charges that through its driver the defendant operated its truck carelessly, negligently, and in such manner and fashion as to knock down Mrs. Moorehead, and that as a result she suffered permanent injury.

The first four counts of the pleas are substantially alike. The first count of each plea, after making the admissions I have heretofore referred to, denies all of the other allegations and alleges that in crossing Thirteenth Street, Mrs. Moorehead did not keep within the continuation of the sidewalk lines on the Avenue and was between the cross-

walk on the Avenue and E Street, and between the intersection of the Avenue and Thirteenth Street and the intersection of Thirteenth Street and E Street, and failed
55 to yield the right of way to the defendant's truck, in violation of a traffic regulation then in force, which provided that vehicles shall have the right of way between cross-walks and between intersections, and that any injury sustained by Mrs. Moorehead was proximately caused by such violation of the regulation.

The second count of the plea denies all other allegations in the second count of each declaration.

The third and fourth counts of the pleas substantially allege the injuries, if any, were caused by her own negligence and carelessness and not by any negligence or carelessness on the part of the driver of the defendant.

The fifth and sixth counts of the plea to the declaration substantially allege that the injuries, if any, suffered by Mrs. Moorehead, were caused by her own negligence and carelessness and not by any negligence or carelessness on the part of the defendant or its servants or employees.

It is for the jury to determine, from all the facts and circumstances in evidence, just how this accident happened, and before instructing you specifically as to the law, I shall state to you certain general propositions of law which will aid you in discharging your duties. In the first place, the burden of proof is upon the plaintiff in this case to establish their case to your satisfaction by the preponderance of the evidence. By the term "preponderance of the evidence," I do not mean, necessarily, the greater number of witnesses on the one side or the other; but I mean that evidence which the jury finds to be the most satisfactory and convincing to the minds of the jurors.

In determining on which side the preponderance of the evidence is, the jury may take into consideration the credibility of the witnesses and the weight to be given their testimonies.

At this point I shall read from the prayers that I have granted at the request of the defendant and the plaintiff.

I think they set forth the law which should govern in
56 this case. As I read them, I shall indicate at whose instance the prayer was granted.

Defendant's Prayer No. 3: You are instructed that you are the sole judges of the credibility of the witnesses and of

the weight to be given the testimony of each. In determining the credibility of a witness and the weight and value you will attach to his testimony, you should weigh carefully every fact and circumstance in connection with the evidence which has been submitted to you for consideration. You have a right to take into consideration the appearance and demeanor of each witness, the reasonableness or the unreasonableness of his testimony and its harmony or incongruity with other facts in the case, his means of knowledge as to any fact about which he testifies, his interest in the case or relation to the parties, or any other circumstance tending to shed light upon the truth or falsity of his testimony. If you believe any witness has knowingly and wilfully testified falsely as to any material fact or facts in the case, you are at liberty to wholly reject the testimony of any such witness.

Defendant's Prayer No. 4: You are instructed that the weight of the testimony does not necessarily depend on the greater number of witnesses who testify on either side of a question in dispute, but you are at liberty as jurors, to consider all the facts and circumstances appearing from the evidence in the case, and to determine from that which of the witnesses are worthy of the greater credit; and if you believe, from the evidence, that the evidence of a small number of witnesses on one side is more credible and trustworthy than the evidence of the greater number on the other side, then the evidence preponderates on the side of the smaller number of witnesses.

Defendant's Prayer No. 5: If the jury believe from the evidence that any witness in this case has wilfully, knowingly, and corruptly testified falsely on this trial to any matter or thing material to the issues in this case, then you are at liberty to disregard the entire testimony of such witness, except in so far, if at all, as it may be corroborated by other credible evidence or by facts and circumstances proved on the trial.

Defendant's Prayer No. 7: The court instructs the jury that you should bring to the consideration of the evidence before you every day common sense and judgment as reasonable men, and those just and reasonable inferences and deductions which you as men would ordinarily draw from the facts and circumstances proved in the case, you should draw and act upon as jurors.

Defendant's Prayer No. 1: The court instructs the jury that the fact that a suit has been commenced by the plaintiff against the defendant is no proof that the defendant is responsible in damages to the plaintiff.

Defendant's Prayer No. 2: The court instructs the jury that you must not regard the act of the court in submitting this case to you for your consideration and determination, as an indication as to what way the court thinks this case should be decided. The mere submission of the case to the jury is no indication that the court thinks the plaintiff should recover in this case. The court expresses no opinion as to what the verdict of the jury should be.

Defendant's Prayer No. 8: The court instructs the jury that negligence, or what is the same thing, the absence of reasonable care, is the foundation of this action, and it is to be determined by what you find a person of ordinary prudence and care would have done under the particular circumstances of this case. The law did not require of the defendant's driver the exercise of an extraordinary degree of care. All that was required of him was the exercise, at and before the time of the collision, of ordinary care, in view of all the facts and circumstances shown by the proof. What is ordinary care depends upon the circumstances of each particular case, and it is such care as a person of ordinary prudence would exercise under circumstances the same as or similar to those shown by the proof. Negligence is the omission to do something which a reasonable

58 man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a prudent and reasonable man would not do.

Defendant's Prayer No. 9: You are instructed that negligence on the part of the defendant cannot be assumed merely because the plaintiff, Bessie M. Moorehead, was injured; but the burden rests upon the said plaintiff to establish negligence on the part of the defendant by a preponderance of the evidence; and, if the said plaintiff fails to do this, you must find for the defendant.

Defendant's Prayer No. 10: The court instructs the jury that if you believe from the evidence that the damage sustained by the plaintiffs, if you believe they sustained damage, was the result of an unavoidable accident and that it

occurred without the fault of either the plaintiffs or the defendant, you should return a verdict for the defendant.

Defendant's Prayer No. 11: The court instructs the jury that even if you find from the evidence that the defendant's driver was, at the time and place in question guilty of the negligence charged in plaintiff's declaration, yet, if you further find from the evidence and under the instructions of the court that the plaintiff, Bessie M. Moorehead, was also negligent, and that her negligence, if any, caused or proximately contributed to cause the accident, then the plaintiffs cannot recover in this case. And the court further instructs you that under such circumstances you are not warranted in comparing the negligence, if any, of the plaintiff, Bessie M. Moorehead, and the defendant's driver, to determine which was guilty of the greater degree of negligence, but if you find from the evidence and under the instructions of the court that the plaintiff, Bessie M. Moorehead was guilty of any want of ordinary care which caused or proximately contributed to cause the accident in question, then you should find the defendant not guilty.

Plaintiff's Prayer No. 3: The court instructs the Jury that negligence consists in doing that which a person or
59 ordinary prudence and care would not do under the
circumstances of a particular or given situation, or
omitting to do something that such a person would do
under those circumstances.

In other words, you are instructed that negligence is the failure to do what reasonably prudent persons would ordinarily have done in like circumstances, having due regard to the proper protection of the life and limb of themselves and others.

Plaintiff's Prayer No. 6: The Court instructs the jury that the burden of proof is on the plaintiff to prove and establish the negligence of the defendant, by a fair preponderance of the evidence in one or more of the particulars charged in the declaration, and that such negligence was the proximate cause of the accident which resulted in the injuries complained of. If you find from a fair preponderance of all of the evidence that the defendant herein, through its agents and servants, was guilty of negligence, which was the proximate cause of the accident and the resulting injuries, and that the plaintiff herein did exercise reasonable care for her own safety, and that said plaintiff

was not guilty of what is called contributory negligence, then your verdict must be for the plaintiff, Bessie M. Moorehead.

At the time of the accident there was in force and effect in the District of Columbia a traffic regulation which provided that "pedestrians shall have the right of way at all cross-walks except those controlled by traffic officers or traffic devices." This means that vehicular traffic must yield to such pedestrians the right of way on such walks as are not controlled by traffic devices or traffic officers. Therefore, if you should find from the preponderance of the evidence that the crosswalks on Pennsylvania Avenue at this intersection were not controlled by a traffic officer or traffic devices at the time of the accident and that the plaintiffs were crossing along and upon such cross-walk, then you will be warranted in finding that Mrs. Moorehead and her husband had the right to proceed across, and while proceeding across such street, had the right of way on such

60 cross-walk. It then became and was the duty of the defendant, through its servant and driver, in the operation of the truck, to respect such right and yield right of way to them. If you find from the preponderance of the evidence that the defendant violated such traffic regulation and failed to yield such right of way, then you will be warranted in finding that the defendant was negligent, and if you further find from the preponderance of the evidence that such negligence was the sole and proximate cause of the accident and the resulting injuries, then your verdict should be for the plaintiffs.

On the other hand, you are reminded that at the same time there was in force and effect in the District of Columbia a traffic regulation which provided that vehicles shall have the right of way between crosswalks and street intersections; therefore, if you should find from the evidence that Mr. and Mrs. Moorehead were not crossing Thirteenth Street on the proper cross-walk but were crossing between crosswalks or between intersections, then it became their duty to look out for approaching vehicles and yield the right of way to them, and if you find the plaintiffs were negligent and that such negligence was the sole and proximate cause of the accident and the resulting injuries, then your verdict will be for the defendant.

Your attention is also invited to another traffic regulation which was in force and effect at that time and which pro-

vided that no vehicle shall proceed over any public highway in the District of Columbia recklessly or at a rate of speed greater than is reasonable and proper, having respect to the width of the highway, the use thereof, and the traffic thereon, or so as to endanger any property or individual, or so as to unnecessarily or unreasonably to endanger the public on the highway. You will inquire whether the defendant company, through its driver, violated any of the provisions of this regulation. If you find from the preponderance of the evidence that the defendant did violate this regulation, then you are warranted in finding that the defendant was negligent, and if you further find that
61 the negligence was the proximate cause of the accident and the resulting injuries sustained by Mrs. Moorehead, then your verdict should be for the plaintiffs.

I will now read some of the prayers which have been granted and which have not been read:

Defendant's Prayer No. 14: You are instructed that under the regulations in force in the District of Columbia on January 31, 1929, the crosswalk across Thirteenth Street on the north side of Pennsylvania Avenue was the space between the white lines marked on the pavement at that place in the street.

Defendant's Prayer No. 6: You are instructed that you should not consider the question of damages in this case until you have determined whether or not the defendant is liable for the damages complained of by the plaintiffs, and if you find from the evidence and under the instructions of the court that the plaintiffs are not entitled to recover from the defendant, then you will have no occasion at all to consider the question of damages.

Defendant's Prayer No. 12: With respect to the alleged ailments and disabilities claimed for the plaintiff, Bessie M. Moorehead, in this case, you are instructed that the burden of proof is upon the said plaintiff, as it is with respect to the question of liability, to show by a preponderance of the evidence, not only that such ailments really exist, or have existed, but also that such ailments or disabilities are the result of the occurrence in question, and the burden is not upon the defendant to show that such ailments or disabilities do proceed or arise from any other cause. You are further instructed that the plaintiff Bessie M. Moorehead,

if she is entitled to recover damages at all, is entitled to recover damages only for those physical injuries, if any, which were caused by the accident and for the mental pain and suffering, if any, incident to such physical injuries, and not for impairment, if any, of her nervous system brought about solely by nervous fright or shock, if any, caused by the accident, and in no way attributable to or caused
62 by the physical injuries sustained. You are further instructed that you have no right to guess or conjecture that any ailments complained of are the result of this accident. You are not to understand from this instruction that the court intends to intimate that the plaintiff Bessie M. Moorehead has such disabilities as are claimed, or that defendant is, or is not, in any manner liable, or to intimate any opinion upon that or any other question of fact in this case.

Defendant's Prayer No. 13: You are instructed that if your verdict is in favor of the defendant as to the plaintiff, Bessie M. Moorehead, then your verdict must also be in favor of the defendant as to the plaintiff, Robert S. Moorehead. You are further instructed with respect to the damages claimed for the plaintiff, Robert S. Moorehead, that he is not entitled to recover anything for the injuries sustained by his wife, nor for her pain and suffering, nor for any other result of the occurrence in question for which his wife is entitled to recover damages. You are further instructed that the burden is upon the plaintiff, Robert S. Moorehead, to show by a preponderance of the evidence, not only that he actually sustained the damages claimed by him, but that the said damages were the result of the occurrence in question, and the burden is not upon the defendant to show that such damages proceeded from any other cause.

Plaintiff's Prayer No. 1: The Court instructs the jury that in the event it finds in favor of the plaintiff, Bessie M. Moorehead, in case #77663, which has been jointly tried with the above case numbered #77664, that when the Jury is entitled to compensate Robert S. Moorehead, if the Jury finds him to be the husband of Bessie M. Moorehead, for such damages as he may have sustained and may have been established by the evidence through the loss of the services and society of his said wife through the negligence of the defendant herein, and to also compensate said husband to

63 the extent of such moneys as the evidence may show him to have expended in the care and treatment of his wife, arising out of said injury, provided, you further find that said husband, himself, was not guilty of any negligence which proximately contributed to cause the accident.

Plaintiff's Prayer No. 5½: The jury is instructed that if under the evidence and instructions given you by the Court, you find that the plaintiff is entitled to recover, then in estimating and fixing the amount of the damages to be awarded to the plaintiff, Bessie M. Moorehead, you have a right to take into consideration the evidence, if any, of the mental pain and suffering naturally incident to the injuries sustained by the plaintiff and undergone by the plaintiff in consequence of said injuries, and also the physical weakness of said plaintiff, if any, and the permanent condition, if any, of the injuries sustained by the plaintiff as the direct consequence of the physical injuries received by said plaintiff.

The Jury will return a separate verdict in each case, whether for the defendant or plaintiffs.

Anything further?

Defendant requested an exception to the Court's instruction as to the effect of the violation of the traffic regulation in so far as it omitted, in connection with such instruction, the element of contributory negligence on the part of the plaintiff.

Exception granted.

Thereupon, the jury retired to consider the evidence. The jury returned a verdict for (\$5,000) Five Thousand Dollars in favor of the plaintiff Bessie M. Moorehead, and a verdict of (\$500) Five Hundred Dollars in favor of the plaintiff Robert S. Moorehead.

Motion of the defendant for a new trial in each case. Motion argued and denied. Exception by Defendant.

And thereupon, and as all of said exceptions were duly noted and allowed as aforesaid, and because the matters and things hereinbefore recited are not matters of record, in order to make the same a part of the record herein, so that the defendant may have his case reviewed on appeal, the defendant, by his attorney, moves the court to
64 sign and seal this, his bill of exceptions, to have the same force and effect as if each and every one of

said exceptions had been separately signed and sealed, which motion is granted by the court; and thereupon, the defendant tenders this, his bill of exceptions, and requests the court to sign and seal the same and to order the same made a part of the record herein, which is accordingly done now for then this 30th day of June, 1932.

O. R. LUHRING, [SEAL.]
Justice.

Approved.

STANLEY D. WILLIS,
Attorney for Plaintiffs-Appellees.

JOHN W. FISHER,
Attorney for Defendant-Appellant.

Endorsed on cover: District of Columbia Supreme Court. No. 5788. American Ice Company, a corporation, appellant, vs. Bessie M. Moorehead, and No. 5789. American Ice Company, a corporation, appellant, vs. Robert S. Moorehead. Court of Appeals, District of Columbia. Filed Sep. 20, 1932. Henry W. Hodges, Clerk.

